

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Senate Bill 407

BY SENATORS TAKUBO, MARONEY, STOLLINGS, AND

PLYMALE

[Passed March 9, 2018; in effect 90 days from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as
2 amended, all relating to modifying definitions related to licensing and approval of child
3 care programs; modifying definitions related to child advocacy, care, residential, and
4 treatment programs eliminating ability for family child care homes, informal family child
5 care homes, or relative family child care homes to self-certify compliance with legislative
6 rules; eliminating statutory caps on the number of children under 24 months of age in
7 family child care facilities and family child care homes; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II – DEFINITIONS.

§49-1-203. Definitions related, but not limited to, licensing and approval of programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, licensing and approval of programs, except in those
3 instances where a different meaning is provided or the context in which the word used clearly
4 indicates that a different meaning is intended.

5 “Approval” means a finding by the Secretary of the Department of Health and Human
6 Resources that a facility operated by the state has met the requirements of legislative rules
7 promulgated for operation of that facility and that a certificate of approval or a certificate of
8 operation has been issued.

9 “Certification of approval” or “certificate of operation” means a statement issued by the
10 Secretary of the Department of Health and Human Resources that a facility meets all of the
11 necessary requirements for operation.

12 “Certificate of license” means a statement issued by the Secretary of the Department of
13 Health and Human Resources authorizing an individual, corporation, partnership, voluntary

14 association, municipality, or county, or any agency thereof, to provide specified services for a
15 limited period of time in accordance with the terms of the certificate.

16 “Certificate of registration” means a statement issued by the Secretary of the Department
17 of Health and Human Resources to a family child care home, informal family child care home, or
18 relative family child care home to provide specified services for a limited period in accordance
19 with the terms of the certificate.

20 “License” means the grant of official permission to a facility to engage in an activity which
21 would otherwise be prohibited.

22 “Registration” means the grant of official permission to a family child care home, informal
23 family child care home, or a relative family child care home determined to be in compliance with
24 the legislative rules promulgated pursuant to this chapter.

25 “Rule” means legislative rules promulgated by the Secretary of the Department of Health
26 and Human Resources or a statement issued by the Secretary of the Department of Health and
27 Human Resources of the standards to be applied in the various areas of child care.

28 “Variance” means a declaration that a rule may be accomplished in a manner different
29 from the manner set forth in the rule.

30 “Waiver” means a declaration that a certain legislative rule is inapplicable in a particular
31 circumstance.

**§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and
treatment programs.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child advocacy, care, residential, and treatment
3 programs, except in those instances where a different meaning is provided or the context in which
4 the word used clearly indicates that a different meaning is intended.

5 “Child Advocacy Center (CAC)” means a community-based organization that is a member
6 in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of
7 this code.

8 “Child care” means responsibilities assumed and services performed in relation to a child’s
9 physical, emotional, psychological, social, and personal needs and the consideration of the child’s
10 rights and entitlements, but does not include secure detention or incarceration under the
11 jurisdiction of the Division of Juvenile Services pursuant to §49-2-901 *et seq.* of this code. It
12 includes the provision of child care services or residential services.

13 “Child care center” means a facility maintained by the state or any county or municipality
14 thereof, or any agency or facility maintained by an individual, firm, corporation, association, or
15 organization, public or private for the care of 13 or more children for child care services in any
16 setting, if the facility is open for more than 30 days per year per child.

17 “Child care services” means direct care and protection of children during a portion of a 24-
18 hour day outside of the child’s own home which provides experiences to children that foster their
19 healthy development and education.

20 “Child placing agency” means a child welfare agency organized for the purpose of placing
21 children in private family homes for foster care or for adoption. The function of a child placing
22 agency may include the investigation and certification of foster family homes and foster family
23 group homes as provided in this chapter. The function of a child placing agency may also include
24 the supervision of children who are 16 or 17 years old and living in unlicensed residences.

25 “Child welfare agency” means any agency or facility maintained by the state or any county
26 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
27 association, or organization, public or private, to receive children for care and maintenance or for
28 placement in residential care facilities, including, without limitation, private homes or any facility
29 that provides care for unmarried mothers and their children. A child welfare agency does not
30 include juvenile detention facilities or juvenile correctional facilities operated by or under contract

31 with the Division of Juvenile Services, pursuant to §49-2-901 *et seq.* of this code, nor any other
32 facility operated by that division for the secure housing or holding of juveniles committed to its
33 custody.

34 “Community based” means a facility, program, or service located near the child’s home or
35 family and involving community participation in planning, operation, and evaluation and which
36 may include, but is not limited to, medical, educational, vocational, social, and psychological
37 guidance, training, special education, counseling, substance abuse, and any other treatment or
38 rehabilitation services.

39 “Community-based juvenile probation sanctions” means any of a continuum of
40 nonresidential accountability measures, programs, and sanctions in response to a technical
41 violation of probation, as part of a system of community-based juvenile probation sanctions and
42 incentives, that may include, but are not limited to:

- 43 (A) Electronic monitoring;
- 44 (B) Drug and alcohol screening, testing, or monitoring;
- 45 (C) Youth reporting centers;
- 46 (D) Reporting and supervision requirements;
- 47 (E) Community service; and
- 48 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,
49 restorative justice programs, and behavioral or mental health treatment.

50 “Community services” means nonresidential prevention or intervention services or
51 programs that are intended to reduce delinquency and future court involvement.

52 “Evidence-based practices” means policies, procedures, programs, and practices
53 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

54 “Facility” means a place or residence, including personnel, structures, grounds, and
55 equipment used for the care of a child or children on a residential or other basis for any number
56 of hours a day in any shelter or structure maintained for that purpose. Facility does not include

57 any juvenile detention facility or juvenile correctional facility operated by or under contract with
58 the Division of Juvenile Services for the secure housing or holding of juveniles committed to its
59 custody.

60 “Family child care facility” means any facility which is used to provide nonresidential child
61 care services for compensation for seven to 12 children, including children who are living in the
62 household, who are under six years of age. A facility may be in a provider’s residence or a
63 separate building.

64 “Family child care home” means a facility which is used to provide nonresidential child
65 care services for compensation in a provider’s residence. The provider may care for four to six
66 children at one time, including children who are living in the household, who are under six years
67 of age.

68 “Family resource network” means:

69 (A) A local community organization charged with service coordination, needs and resource
70 assessment, planning, community mobilization, and evaluation, and which has met the following
71 criteria:

72 (i) Agreeing to a single governing entity;

73 (ii) Agreeing to engage in activities to improve service systems for children and families
74 within the community;

75 (iii) Addressing a geographic area of a county or two or more contiguous counties;

76 (iv) Having nonproviders, which include family representatives and other members who
77 are not employees of publicly funded agencies, as the majority of the members of the governing
78 body, and having family representatives as the majority of the nonproviders;

79 (v) Having representatives of local service agencies, including, but not limited to, the public
80 health department, the behavioral health center, the local health and human resources agency,
81 and the county school district, on the governing body; and

82 (vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

83 (B) A family resource network may not provide direct services, which means to provide
84 programs or services directly to children and families.

85 "Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and
86 services needed by families to care for their family members with developmental disabilities and
87 to enjoy a quality of life comparable to other community members.

88 "Family support program" means a coordinated system of family support services
89 administered by the Department of Health and Human Resources through contracts with
90 behavioral health agencies throughout the state.

91 "Foster family home" means a private residence which is used for the care on a residential
92 basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult
93 member of the household.

94 "Health care and treatment" means:

95 (A) Developmental screening;

96 (B) Mental health screening;

97 (C) Mental health treatment;

98 (D) Ordinary and necessary medical and dental examination and treatment;

99 (E) Preventive care including ordinary immunizations, tuberculin testing, and well-child
100 care; and

101 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and
102 treatment does not include an abortion.

103 "Home-based family preservation services" means services dispensed by the Department
104 of Health and Human Resources or by another person, association, or group who has contracted
105 with that division to dispense services when those services are intended to stabilize and maintain
106 the natural or surrogate family in order to prevent the placement of children in substitute care.

107 There are two types of home-based family preservation services and they are as follows:

108 (A) Intensive, short-term intervention of four to six weeks; and

109 (B) Home-based, longer-term after care following intensive intervention.

110 "Informal family child care" means a home that is used to provide nonresidential child care
111 services for compensation for three or fewer children, including children who are living in the
112 household who are under six years of age. Care is given in the provider's own home to at least
113 one child who is not related to the caregiver.

114 "Nonsecure facility" means any public or private residential facility not characterized by
115 construction fixtures designed to physically restrict the movements and activities of individuals
116 held in lawful custody in that facility and which provides its residents access to the surrounding
117 community with supervision.

118 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include
119 any of the following:

120 (A) An act resulting in bodily injury or death;

121 (B) The use of a weapon in the commission of the offense;

122 (C) A domestic abuse offense involving a significant or likely risk of harm to a family
123 member or household member;

124 (D) A criminal sexual conduct offense; or

125 (E) Any offense for driving under the influence of alcohol or drugs.

126 "Out-of-home placement" means a post-adjudication placement in a foster family home,
127 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment
128 facility, staff secure facility, hardware secure facility, detention facility, or other residential
129 placement other than placement in the home of a parent, custodian, or guardian.

130 "Out-of-school time" means a child care service which offers activities to children before
131 and after school, on school holidays, when school is closed due to emergencies, and on school
132 calendar days set aside for teacher activities.

133 "Placement" means any temporary or permanent placement of a child who is in the
134 custody of the state in any foster home, group home, or other facility or residence.

135 “Pre-adjudicatory community supervision” means supervision provided to a youth prior to
136 adjudication, for a period of supervision up to one year for an alleged status or delinquency
137 offense.

138 “Regional family support council” means the council established by the regional family
139 support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

140 “Relative family child care” means a home that provides nonresidential child care services
141 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,
142 uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given
143 in the provider’s home.

144 “Residential services” means child care which includes the provision of nighttime shelter
145 and the personal discipline and supervision of a child by guardians, custodians, or other persons
146 or entities on a continuing or temporary basis. It may include care or treatment, or both, for
147 transitioning adults. Residential services does not include or apply to any juvenile detention facility
148 or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to
149 this chapter, for the secure housing or holding of juveniles committed to its custody.

150 “Risk and needs assessment” means a validated, standardized actuarial tool which
151 identifies specific risk factors that increase the likelihood of reoffending and the factors that, when
152 properly addressed, can reduce the likelihood of reoffending.

153 “Secure facility” means any public or private residential facility which includes construction
154 fixtures designed to physically restrict the movements and activities of juveniles or other
155 individuals held in lawful custody in such facility.

156 “Staff secure facility” means any public or private residential facility characterized by staff
157 restrictions of the movements and activities of individuals held in lawful custody in such facility,
158 and which limits its residents’ access to the surrounding community, but is not characterized by
159 construction fixtures designed to physically restrict the movements and activities of residents.

160 “Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire
161 designed to identify juveniles in need of further assessment for medical, substance abuse,
162 emotional, psychological, behavioral, or educational issues, or other conditions.

163 “State family support council” means the council established by the Department of Health
164 and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities
165 specified in §49-2-1 *et seq.* of this code.

166 “Time-limited reunification services” means individual, group, and family counseling,
167 inpatient, residential, or outpatient substance abuse treatment services, mental health services,
168 assistance to address domestic violence, services designed to provide temporary child care, and
169 therapeutic services for families, including crisis nurseries and transportation to or from those
170 services, provided during 15 of the most recent 22 months a child or juvenile has been in foster
171 care, as determined by the earlier date of the first judicial finding that the child is subjected to
172 abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

173 “Technical violation” means an act that violates the terms or conditions of probation or a
174 court order that does not constitute a new delinquent offense.

175 “Truancy diversion specialist” means a school-based probation officer or truancy social
176 worker within a school or schools who, among other responsibilities, identifies truants and the
177 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
178 to court involvement.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark R. Warner
.....
Chairman, Senate Committee

Steve Kuntz
.....
Vice-Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Joe Lavin
.....
Clerk of the Senate

Steve Hovvins
.....
Clerk of the House of Delegates

Walter B. Coakley
.....
President of the Senate

Tim Pappas
.....
Speaker of the House of Delegates

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *27th*
Day of *March* 2018.

Jim Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2018

Time 11:57 am